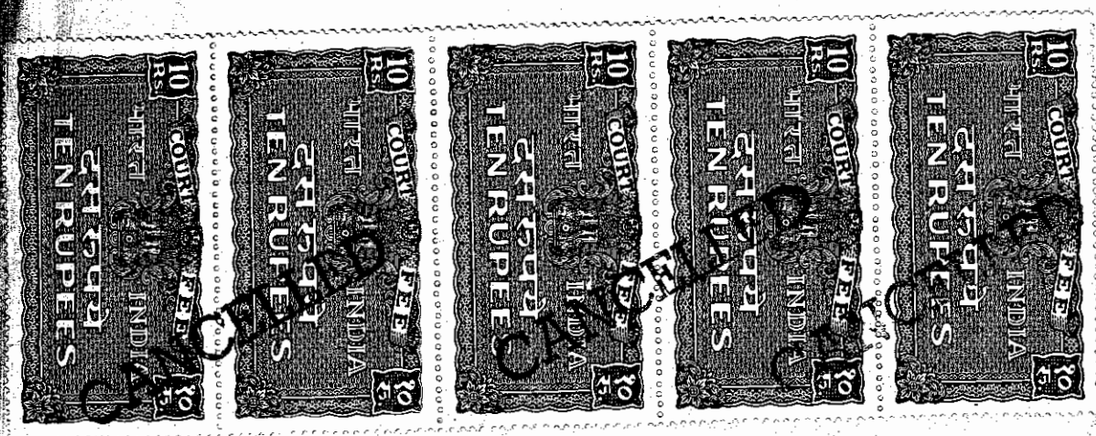

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Writ Petition No. 416 /2002

PETITIONER : Food Corporation of India,
Through District Manager,
Bilaspur (C.G.)

- Versus-

RESPONDENTS : 1. Shyam Sunder Deepak,
Ex. Assistant Grade-I
In F.C.I. R/o Behind
Civil Court Ware House Road,
Bilaspur(C.G.)

2. Controlling Authority and
Assistant Labour Commissioner
(Central), Bilaspur(C.G.).

3. Appellate Authority under the
Payment of Gratuity Act and
Regional Labour Commissioner
(Central), 10, Civic Center,
Marhatal, Jabalpur(M.P.).

P. R. No. 420/02
Presented by Shri Ashish Mukherjee
dated 20.02.02

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS, PROHIBITION, CERTIORARI ETC.OR ANY OTHER DIRECTION OR ORDER TO DO JUSTICE IN THE MATTER.

AFR

11

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.416 OF 2002

Food Corporation of India

versus

Shyam Sunder Deepak and others

ORDER

POST FOR 26 -10-2006

Sd/-
Satish K. Agnihotri
Judge

JUDGE

28-10-2006

(112)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.416 OF 2002

Petitioner	:	Food Corporation of India
	versus	
Respondents	:	Shyam Sunder Deepak and others

Present : Mr. Prashant Jayaswal, Senior Advocate with Mr. Atul Kumar, counsel for the petitioner.
Mr. P.S.Koshy, counsel for respondent No.1.

ORDER

(Passed on 28th of October, 2006)

The present petition filed under Article 226/227 of the Constitution of India impugns the order dated 21-12-2001 (Annexure P-6) passed by the Appellate Authority under the Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central), Jabalpur (M.P.) (henceforth 'the Appellate Authority') in Appeal No.PGA 50/99.ES.IV, whereby the petitioner – Corporation was directed to pay a gratuity of Rs.24,300/- declaring service

113

rendered by respondent No.1 with the State Government as continuous service without break in service.

2. The facts in nutshell are that respondent No.1, while working as officiating copyist in the office of District and Sessions Judge, Bilaspur, applied for appointment to the post of Assistant Grade-III in the petitioner – Corporation. Respondent No.1 was duly selected for appointment on the post of Assistant Grade-III in the petitioner – Corporation vide order dated 7-2-1968 (Annexure P-2). A formal appointment order was issued on 2-3-1968 (Annexure P-3). Service of respondent No.1 was confirmed on regular basis. On attaining the age of superannuation, respondent No.1 retired from service with effect from 19-3-1998. Respondent No.1 was paid gratuity amount under provisions of the Payment of Gratuity Act, 1972 (henceforth 'the Act, 1972') and the Payment of Gratuity (Central) Rules, 1972 for the period respondent No.1 worked with the petitioner – Corporation. Respondent No.1 was not granted continuity of service for working with the State Government.

3. Being aggrieved, respondent No.1 approached the Controlling Authority under the Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central), Bilaspur (henceforth 'the Controlling Authority') claiming additional payment of gratuity to the extent of Rs.24,300/- for the service rendered by him with the

114

State Government. The Controlling Authority, by its order dated 30-7-1999 (Annexure P-5) in Case No.BSP/36(14)/99-ALC, dismissed the application of respondent No.1 holding that respondent No.1 was not entitled to gratuity for the period he had worked with the State Government.

4. Being aggrieved, respondent No.1 preferred an appeal under Section 7(7) of the Act, 1972 before the Appellate Authority in Appeal No.PGA 50/99.ES.IV. The Appellate Authority, relying on Explanation 2 to Clause 4 of the Food Corporation of India (Death-cum-Retirement Gratuity) Regulations, 1967 (henceforth 'the Regulations, 1967'), held as under :-

> "..... The Clause 4 of the above regulation explains the circumstances under which a person who has rendered service in Government before joining the service of the Corporation can be taken into consideration for the purpose of gratuity payment. The Explanation (2) Clause 4 of the above Regulations reads as under :-
>
> Explanation 2 : Service rendered in the Govt. or any Public or Private Undertaking by an employee before his joining service of the Corporation may be "declared" by the Managing Director to be deemed, in whole or in part, to be qualifying service in the Corporation provided that there was not break in service before joining the Corporation.

(18)

It lays down the condition that there should be no break in service before joining the corporation by the appellant from service of the State Government. The letter dated 18-1-1968 by Shri M.N.Bhavnani, District Manager substantiates the claim of the appellant that there was no break in service when the appellant left the service of District and Sessions Judge, Bilaspur and reported for service in FCI. The said letter states clearly that the application of the appellant has been duly recommended and forwarded by District and Sessions Judge, Bilaspur. This letter was followed by the appointment order dated 2-3-1968. All those documents prove beyond doubt that there was no break in service when the appellant left the service of the State Government and joined the service of the FCI. Moreover, the respondent has not brought out adverse remarks against appellant while he was working with the respondent. The respondent failed to produce the service registers when the same was called for by the Appellate Authority. The respondent in their submission dated 8-1-2001 clearly stated that the application for employment of the appellant was not traceable in their office. Moreover, the Managing Director of FCI has never rejected in writing the appellant's case for considering the period of service with the M.P. Government. The apparent inaction on the part of the FCI to declare the service rendered by the appellant with the State Government will not lead to the inference that his case has been turned down by Managing Director of FCI."

(116)

5. The appeal filed by respondent No.1 was accordingly allowed by order dated 21-12-2001 (Annexure P-6).

6. The petitioner – Corporation has filed this petition impugning the order dated 21-12-2001 (Annexure P-6) passed by the Appellate Authority on the grounds that the service rendered in the Government or Public or Private Undertaking before joining the service with the petitioner – Corporation provides for service with Public or Private Undertaking not for service with the State Government. Secondly, there was no declaration by the Managing Director for extending the period of qualifying service rendered earlier before joining service of the petitioner – Corporation. Thirdly, there was a break in service. Thus, the earlier service period rendered with the State Government may not be taken as period of service for the purpose of gratuity. Lastly, the impugned order passed by the Appellate Authority is erroneous on the face of records and statutory provisions.

7. Mr. Prashant Jayaswal, learned Senior Counsel with Mr. Atul Kumar, learned counsel appearing for the petitioner – Corporation would submit as stated above. Learned counsel would further submit that respondent No.1 was not entitled to grant of any gratuity amount for the past services rendered with the State Government as there was a break of 17 days in service.

117

8. Mr. P.S.Koshy, learned counsel appearing for respondent No.1, per contra, would support the reasoning and order passed by the Appellate Authority on the ground that the contention of the petitioner that service of respondent No.1 rendered with the State Government is not contemplated in Clause 4 of the Regulations, 1967 is bad on the face of the Regulations, 1967 itself.

9. Having heard learned counsel for the parties and perusing records appended to the petition and also to the return, it is evident that the contention of the petitioner – Corporation that the service rendered with the State Government cannot be treated as qualifying service for grant of gratuity under Explanation 2 to Clause 4 of the Regulations, 1967 as the same provides only for Public or Private Undertakings is misconceived and deserves to be rejected on the simple ground that bare reading of Explanation 2 to Clause 4 of the Regulations, 1967 makes it clear that service rendered in the Government or any Public or Private Undertaking by an employee before he joined service of the petitioner – Corporation may be declared by the Managing Director to be deemed in whole or in part to be qualifying service in the petitioner – Corporation. There is a clear provision that the service rendered in the Government may be treated as qualifying service in the petitioner – Corporation.

(118)

10. Next contention, that there was a break in service and declaration was accordingly not made by the Managing Director, in the facts and circumstances of the case, is also not tenable. The question of declaration was never considered by the Managing Director as it was treated by the petitioner – Corporation as a break in service before joining the petitioner – Corporation. Order dated 14-12-1967 (Annexure P-1) stating that the service of respondent No.1 would be terminated with effect from 20-1-1968 A.N. as no longer required, does not mean that service of respondent No.1 was terminated. The application of respondent No.1 was considered on the basis of duly recommended and forwarded letter by the District and Sessions Judge, Bilaspur to the District Manager of the petitioner – Corporation permitting him to join the selection process for appointment on the post of Assistant Grade-III as the same is obvious from letter dated 18-1-1968 (Annexure R-1). The order of selection and appointment was passed on 7-2-1968 (Annexure P-2), as such there was a gap of about 17 days. In the order dated 7-2-1968, there is a reference of D.O. letter dated 23-1-1968 while endorsing copy to the Officer on Special Duty, Food Corporation of India.

11. The Hon'ble Supreme Court, in ***Jeevanlal (1929) Limited vs. Its Workmen***[1], while considering the expression "continuous service", held as under :-

112

10. : "..... there can be no doubt that in a different context the same words can and often have different meanings. As this Court has observed in *Budge Budge Municipality v. P.R.Mukherjee* 'the same words may mean one thing in one context and another in different context. This is the reason why decisions on the meaning of particular words or collection of words found in other statutes are scarcely of much value when we have to deal with a specific statute of our own; they may be helpful but cannot be taken as guides or precedents' .....

'Continuous service' in the context of the scheme of gratuity framed by the tribunal in the earlier reference postulates the continuance of the relationship of master and servant between the employer and his employees. If the servant resigns his employment service automatically comes to an end. If an employer terminates the service of his employee that again brings the continuity of service to an end. If the service of an employee is brought to an end by the operation of any law that again is another instance where the continuance is disrupted; but it is difficult to hold that merely because an employee is absent without obtaining leave that itself would bring to an end the continuity of his service."

120

12. Following the said decision, the Hon'ble Supreme Court in another case ***Banaras Hindu University, Varanasi and another vs. Dr. Indra Pratap Singh***[2], while considering the expression "continuous service", has prescribed in clause (a) of para 2 of Merit Promotion Scheme evolved by the University Grants Commission, observed thus –

> 9. : "..... In case of shift from one University to other – or from one institution to the other – it can reasonably be presumed that there is bound to be some interval. The interval may be of a day, a week or a month. What is relevant is not the length of the interval or break, as it may be called, but its nature. We do not mean to say that length of such interval is totally irrelevant; what we mean, however, is that one must take into consideration the reason for which break – or the circumstances in which such break – has occurred."

It was further observed that –

> 12. : "In *Words and Phrases* (Vol.9) the word "continuous employment" is assigned the following meaning :
>
> "It means working with reasonable regularity, and work does not cease to be 'continuous' because of interruptions in

(121)

occupation due to periods of temporary illness, such as are incident to people of normal health. 'Continuously', as used in regulations defining total permanent disability under war risk policy, does not denote absolute continuity."

13. : "Again, the word "continuous service" is given the following meaning :

"Phrase 'continuous service', as contained in collective bargaining agreement, had to be viewed in light of terms of agreement which provided for work schedule of eight hours per day for a five day week, Monday to Friday, inclusive and, therefore, one working regular prescribed hours of labour would be rendering 'continuous service' within agreement even though not working on Saturdays or Sundays or more than eight hours in any 24."

13. Looking into the facts that the application for appointment on the post of Assistant Grade-III made by respondent No.1 was duly recommended and forwarded by the District and Sessions Judge, Bilaspur, where respondent No.1 was working, it cannot be held that respondent No.1 was terminated from service and there was a break in service. The order dated 14-12-1967 (Annexure P-1), whereby the services of respondent No.1 was terminated as no longer required by the District and Sessions Judge, Bilaspur was necessary to enable

(122)

respondent No.1 to join the new posting as Assistant Grade-III in the petitioner – Corporation. Accordingly, there was some interval or break between the service with the Government before joining the new posting with the petitioner – Corporation. Thus, this cannot be held as a break in service.

14. The matter was heard and was reserved for orders on 8-9-2006. At the request of learned counsel for the petitioner, four days' time was granted to file a copy of the D.O. letter dated 23-1-1968. The petitioner failed to file the said document. The petitioner further filed an application for extension of time being I.A.No.9202/2006, which was heard on 19-9-2006 and the petitioner was granted two more weeks' time to file a copy of the D.O. letter dated 23-1-1968. The petitioner was further directed to file a copy of the letter of the District and Sessions Judge, Bilaspur, whereby name of respondent No.1 was recommended and forwarded to the Officer on Special Duty in the petitioner – Corporation. Notwithstanding the orders made by this Court to file a copy of the D.O. letter dated 23-1-1968 and a copy of the letter of the District and Sessions Judge, Bilaspur, no document was filed.

15. As a result and for the aforesaid reasons, it is not warranted to interfere with the findings and orders dated 21-12-

123

2001 (Annexure P-6) passed by the Appellate Authority. This petition is accordingly dismissed with costs quantified to be a sum of Rs.5,000/-(Rupees Five Thousand).

Sd/-
Satish K. Agnihotri
Judge

28-10-2006

---

1 AIR 1961 SC 1567
2 1992 Supp (2) SCC 2

Gopal